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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 DAWN RUTHERFORD,)	Case No. CV 07-6426 (WHA)
)	
12 Plaintiff,	)	THE PRUDENTIAL INSURANCE COMPANY
	)	OF AMERICA & SCENE 7 INC. LONG TERM
13 v.	)	DISABILITY PLAN'S NOTICE OF MOTION
	)	AND MOTION FOR SUMMARY JUDGMENT
14 SCENE 7, INC. LONG TERM)	
15 DISABILITY PLAN, PRUDENTIAL	)	Date: July 10, 2008
16 INSURANCE COMPANY OF	)	Time: 8:00 a.m.
17 AMERICA,	)	Ctrm: 9
)	
18 Defendants.	)	[Filed and served concurrently with
	)	Memorandum of Points and Authorities;
19	)	Declaration of Tamika Williams; Declaration of
)	Edith Ewing; Declaration of Ronald Alberts;
)	[Proposed] Order; and, [Proposed] Judgment]

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21 TO THIS HONORABLE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE that on July 10, 2008 at 8:00 a.m. or as soon thereafter as the
23 matter may be heard, in Courtroom 9 of the above-entitled court located at 450 Golden Gate
24 Avenue, San Francisco, California 94102. Defendants THE PRUDENTIAL INSURANCE
25 COMPANY OF AMERICA and SCENE 7 INC LONG TERM DISABILITY PLAN.
26 ("Defendants") will and hereby do move, pursuant to Federal Rules of Civil Procedure, Rule 56,
27 for an order granting summary judgment on the claims for relief for breach of contract, breach of
28 good faith and fair dealing, and punitive damages against Prudential set forth in the Complaint of

1 DAWN RUTHERFORD ("Plaintiff" or "Rutherford") on the grounds that the undisputed
2 material facts entitle Defendants to summary judgment as a matter of law. Summary judgment
3 in favor of Defendants is warranted because (1) based upon the *de novo* standard of review, the
4 administrative file should not be augmented as further discovery is not necessary; and (2)
5 Prudential's decision to terminate benefits was proper under the plan because, as demonstrated
6 by the extensive records, plaintiff's claimed disabilities are either self reported or are due to
7 mental illness; and, Prudential fulfilled its obligations to plaintiff by paying her the maximum
8 amount of benefits allowed under the plan, twenty four months.

9 This Motion is based upon this Notice of Motion and Motion, the accompanying
10 Memorandum of Points and Authorities, the Declarations of Edith Ewing and Tamika Williams,
11 the Declaration of Ronald Alberts, the Administrative Record, and the Exhibits attached thereto
12 or referenced therein, all of which are filed and served concurrently herewith, upon all records
13 and files in this action, and upon such other and further evidence and argument as may be
14 presented at or prior to the hearing of this Motion.

15
16 DATED: June 5, 2008

17 GORDON & REES LLP

18
19 By: 

Ronald K. Alberts

Tad A. Devlin

Attorneys for Defendants

SCENE 7, INC. LONG TERM

DISABILITY PLAN, PRUDENTIAL

INSURANCE COMPANY OF AMERICA